THE HON'BLE MR JUSTICE A.GOPAL REDDY

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WP No.29801/1995

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Dt.7-3-2005

C.K.Narayana Chari ..Petitioner

V.

1. The Co-operative Tribunal at Hyderabad represented by its

Presiding Officer, 7th Floor, Chandra Vihar, M.J.Road, Hydrabad.

and another.

..Respondents.

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THE HON'BLE MR JUSTICE A.GOPAL REDDY

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WP No.29801/1995

ORAL ORDER:

The petitioner was President of Sri Venkateswara Employees Co-operative House Building Society Limited, Mahabubnagar from 1971 to 1982. He was served with a surcharge notice under Section 60(1) of the A.P. Co-operative Societies Act,1964 (for short "the Act") in RC No.1106/80-B dt. 2-12-1992 intimating that when inspection conducted under Section 52 of Act into the affairs of the Society revealed that there was a cash balance of Rs.16684-18 on 31-10-1979; out of which an amount of Rs.8000/- was remitted into current account of the society in SBH, Mahabubnagar on 4-4-1980 and the balance was came down to Rs.8387-15 as on 17-7-1982. The Co-operative Sub-Registrar who assumed charge of the society received only Rs.88-07 as against cash balance of Rs.8387-15, and balance amount of Rs.8299-08 has been diverted for food for work programme for laying out of internal roads and drains to develop the colony as per the committee meeting held on 6-9-1978, which was approved by the General Body in its resolution dt. 8-10-1978 and decided the entire work of laying internal roads and side drains should be taken up pending receipt of the bills from P.S. Mahabubnagar and the amount spent over for the said work be made good from the members/beneficiaries themselves, but the said amount has not been recovered as decided by the General Body. Thus, the members of the Managing Committee have failed to discharge their duties and caused deficiency in the assets of the Society and accordingly called upon them as to why they should not be surcharged for recovery of Rs.8299-08 with interest at 8 ½% from 31-10-1979 till the date of repayment. Some of the members of the Managing Committee in their explanation to the show cause notice pleaded that the

Managing committee of the Society and the General Body have resolved to request the PS Block Mahabubnagar to take up the developmental works in the colony under Food for Work Programme and also resolved to bare the expenditure in excess if any by collecting the amount from the members of the society. Three members of the Managing Committee ie., M.Buchaiah, S.Chandra Sekhar and P.Sambaiah further pleaded that either the Managing Committee or General Body never authorized the President to utilize the amount collected towards loan instalments from the members of the society towards developmental works. The petitioner in his explanation accepted the utilization of the amount collected towards loan instalments to meet the expenditure under Food for Work programme. He further stated that as per the resolution of the General Body, he spent the said amount and requested the Divisional Co-operative Officer, Mahabubnagar, to issue necessary instructions to collect the said amount from the members of the society. The Divisional Co-operative Officer not satisfied with the explanation offered by the petitioner held that the petitioner who was President during the relevant period had undertaken Food for Work programme from out of amount collected from the members towards loan instalments, failed to recover the amount spent in excess among the members of the General Body, and he alone is responsible since there is no provision in the Registered Bye-laws of the Society to take up Food for Work programme by diverting the loan instalments amount collected from the members to meet the expenditure and accordingly surcharged the petitioner for recovery of Rs.8299-08 with interest at 16% per annum from the date of surcharge ie., 31-12-1993. Aggrieved by the same, the petitioner filed an appeal before the Co-operative Tribunal, Hyderabad. The Tribunal dismissed the said appeal by the impugned judgment observing that the petitioner admitted that he was President at the relevant time and Managing Committee authorized the sub-committee to get the work done and there is no dispute that the amount was utilized for laying roads in pursuance of the resolution passed by the General Body. When the Bye-laws of the society does not authorize the Executive Committee or General Body to divert the amount collected from the members towards loan instalments to such programmes, which has to be sent to the Housing Federation and the said amount cannot be treated as profit or reserve of the society or amount lying in the hands of the President of the Executive Committee. Nothing is mentioned in the account books that the amount so utilized under the Food for Work programme was subject to reimbursement. No vouchers were produced and available in the record. In the absence of the same, it is evident that no such expenditure was booked regarding incurring of the expenditure for developmental works. Mere passing of a resolution to collect the amount from the members does not exonerate the President from his laches.

Learned counsel for the petitioner would contend that the surcharge notice was issued without further enquiry into the matter and when it is indicated that the surcharge amount will be recovered with interest at 8½% per annum, surcharge order which was passed with interest at 16% per annum is contrary to the show cause notice. Further when the Managing Committee and General Body passed resolutions authorizing the President to spent the amount for the said work, which can be recoverable from the members, it is for the successive committee to recover the same from them. Therefore, the petitioner alone cannot be held responsible for the said amount.

It is not in dispute that the amount which was spent was the amount collected from the members towards loan instalments and it is not the asset of the society but the same has to be passed on to the Housing Federation. Even if the Society passes a resolution for spending the amount available for the time being, it is the duty and responsibility of the President and members of the Society to recover the same form the members and sent the same to the Housing Federation within time. The Tribunal found that nothing is mentioned with regard to the work in the account books that the amount so utilized under Food for Work programme subject to reimbursement nor any vouchers were produced and available on record and cash book of the society revealed that no such expenditure was mentioned for developmental works. Petitioner is responsible for the affairs of the society and he cannot be absolved of the laches committed in spending the amount. Even if it is spent, it is unauthorized and he is not supposed to utilize the same except to pass on to the Housing Federation. In view of the same, the reliance placed by the learned counsel for the petitioner on the judgment of the Madras High Court in ***SUBBAMMAL V. TENKASI CO-OP. URBAN BANK*** is not applicable to the facts of the present case.

Once it is notified that the surcharge amount will be recovered at 8 1/2% in the show-cause notice, surcharge order, which was passed to recover the amount with interest 16%, is contrary to the show cause notice. The Tribunal has not considered the said aspect whether surcharge amount is to be recovered with 81/2% interest as per show cause notice or 16% interest as per the surcharge order. In view of the same, the surcharge order as confirmed by the Tribunal to the extent of recovery of the surcharge amount with interest at 16% is modified as 8 ½% as suggested in the show cause notice.

The writ petition is accordingly allowed to the extent indicated above. No costs.

7-3-2006

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